IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1613 OF 1999

Rohini Bhaskar Upasani. ...Applicant
V/s.
State of Maharashtra. ...Respondent

Mr.Dilip Taur holding for Ms.Varsha Palav for Applicant.
Ms.M.M. Deshmukh, APP for the State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 23, 2006

P.C. :-

. None appears for the respondent though served.

. The applicant is seeking an order from this Court quashing the proceedings which are pending before the Court of Chief Judicial Magistrate, Kolhapur, in Criminal Case No.29787/93.

2. The brief facts are as under :-

. The applicant is a member of Navneet Sahakari Housing Society. The said society made an application to the Municipal Corporation, Kolhapur, on 9th July, 1991 seeking permission to construct compound wall

surrounding their premises. Though the said application was preferred, no reply was given by the Municipal Corporation and pursuant to the provisions of the Municipal Corporation Act, after the expiry of 60 days, such permission was deemed to have been granted. Accordingly, the society constructed the compound wall in October 1991. In August 1993, for the first time, the dispute was raised by the owner of plot which was situated next to the Navneet society. He filed the complaint in which he alleged that all the members of the society including the applicant herein had threatened his wife and daughter-in-law and therefore, they had committed an offence punishable under Sections 341, 506 read with Section 34 of the IPC. Thereafter, an application was moved asking the Chief Judicial Magistrate under Sections 192, 193, 196, 417, 425, 426, 441, 448, 463, 465. 466, 478 of the IPC. The said application was dismissed by the trial Court. Against that, the complainant filed revision application in the court of Sessions Judge. In the meantime, Navneet Co-operative Society engaged the applicant as a member and filed the Civil Suit for permanent injunction

against the Corporation, complainant and others which was decreed and the Court gave a finding that the compound wall which was constructed, was constructed after obtaining proper and valid permission. In the meantime, though the applicant was exempted from appearing in the criminal court, since she had left India and was residing in Germany on an assignment, inspite of the exemption granted, the Chief Judicial Magistrate forfeited her personal bond and issued non-bailable warrant against the applicant. The applicant, therefore, has filed this petition for quashing the non-bailable warrant and also the complaint which is filed.

3. Perusal of the complaint discloses that the said complaint initially was filed for the offence punishable under Sections 341, 506 read with Section 34 of the IPC and thereafter, various other offences were sought to be added in the said complaint. The dispute in essence was of a civil nature regarding the construction of the compound wall and the civil suit filed by the society was finally decreed in their favour. It is obvious that

the present complaint, from the tenure of the averments which are made in the complaint, is of civil nature and in which no offence is disclosed against the present applicant. In my view, the case is made out for quashing the complaint. Apart from that, the Sessions Court has clearly erred in expressing its revisional jurisdiction in setting aside the order passed by the Magistrate refusing the various other charges which are levelled against the applicant and others. It is obvious that therefore, the present complaint has been filed maliciously and as a counter blast, civil suit was filed by the society. In my view, this is, therefore, a fit case for quashing the complaint.

4. The Criminal Application is, accordingly, allowed in terms of prayer clause (b). Rule is made absolute, accordingly.

(V.M. KANADE, J.)